

Message Text

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ACTION EUR-12

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LIMITED OFFICIAL USE SECTION 01 OF 03 OECD PARIS 12536

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TAGS: OECD, CIEC, EFIN

SUBJECT: CIEC FINANCIAL AFFAIRS COMMISSION (FAC)

REF: GANTZ/BOND TELECON, APRIL 27, 1977

1. SUMMARY: IN COURSE OF THREE SESSIONS APRIL 27-28
USDEL DISCUSSED PARAS. 1-6 OF US INVESTMENT DRAFT
WITH G-8. PROCESS RESULTED IN A NUMBER OF PROPOSED
CHANGES. HOW AND WHEN WE WILL USE AGREED G-8 DRAFT
WITH G-19 NOT YET DECIDED, ALTHOUGH TEXT WILL NOT
REPEAT NOT BE PASSED TO G-19 UNTIL G-8 IS CONVINCED
THAT G-19 REMAINS COMMITTED TO NOVEMBER COMPROMISES.
END SUMMARY.

2. PARAGRAPH 1. G-8 WISHES TO RETAIN WORD "TRANSFER"
IN PLACE OF "FLOW" IN U.S. DRAFT, GIVEN FACT THAT THIS
PARA WAS AGREED IN NOVEMBER.

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3. PARA 2. G-8 PREPARED TO ACCEPT PHRASE "CONSIDER IT
IMPORTANT" VICE "CONSIDER IT VITAL" BUT WISHES TO RE-
TAIN "BE CONSISTENT WITH" LANGUAGE IN LAST LINE. US
AGREED ON ASSUMPTION "CONSIDER IT IMPORTANT" LANGUAGE
ULTIMATELY ACCEPTED.

4. PARA 3. EC REP (SLATER) ARGUED FOR EXTENSIVE

MODIFICATIONS TO THIS SECTION DESIGNED TO BRING IT MORE IN LINE WITH EARLIER DRAFTS, AND, APPARENTLY, AS PART OF EFFORT TO REACH INTERNAL EC COMPROMISE. SUGGESTED NEW TEXT, WHICH US DEL PROMISED TO STUDY, READS: "THE PARTICIPANTS OF CIEC RECOGNIZE THAT, IN THE EXERCISE OF THEIR SOVEREIGNTY, HOST STATES ARE ABLE TO DETERMINE THE CONDITIONS UNDER WHICH FOREIGN PRIVATE INVESTMENT PLAYS A ROLE IN THE DEVELOPMENT PROCESS." USDEL HAD ARGUED THAT OUR LANGUAGE PRESERVED DISTINCTION BETWEEN INITIAL SETTING OF RULES AND CHANGES AFTER INVESTMENT HAD TAKEN PLACE, BUT EC AND SWISS ARGUED THIS PROBLEM TAKEN CARE OF BY INSERTION IN PARA 6B BELOW.

IN VIEW TELECON, USDEL REOPENED ISSUE, AND OBTAINED G-8 AGREEMENT TO SUBSTITUTE "COUNTRY" FOR "HOST STATES" AND TO INSERT "IS ADMITTED AND" BEFORE "PLAYS A ROLE."

5. PARA 4. AGREED REVISION READS AS FOLLOWS: "IT IS ALSO RECOGNIZED THAT A VERY IMPORTANT FACTOR IN ACHIEVING AND MAINTAINING AN ADEQUATE FLOW OF CAPITAL TO HOST COUNTRIES IS THE PROVISION OF AN APPROPRIATE INVESTMENT CLIMATE."

6. PARA 6. ALMOST EVERY SUB-PARAGRAPH OF PARA 6 RECEIVED EXTENSIVE DISCUSSION. EC SUGGESTED NEW "CHAPEAU" LANGUAGE ULTIMATELY AGREED ON AD REFERENDUM IN FOLLOWING FORM: "THE PARTICIPATING COUNTRIES HAVE LIMITED OFFICIAL USE

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IDENTIFIED THE FOLLOWING FUNDAMENTAL PRINCIPLES WHICH CONTRIBUTE, TO THE EXTENT THAT THEY ARE IMPLEMENTED TOGETHER, TO THE CREATION OF A FAVORABLE CLIMATE FOR DIRECT FOREIGN INVESTMENT:" IDEA WAS TO ASSURE TO THE EXTENT POSSIBLE THAT ALL OF THE "PRINCIPLES" (WHICH MAY YET BECOME "ELEMENTS") BE IMPLEMENTED TOGETHER RATHER THAN SELECTIVELY.

7. PARA 6A. G-8 AGREED THAT FINAL PHRASE BEGINNING "AND AFFECTING THE CONDITIONS UNDER..." WAS UNNECESSARY AND COULD BE DROPPED IN THE INTEREST OF BREVITY.

8. PARA 6B. US LANGUAGE ACCEPTED WITHOUT SIGNIFICANT CHANGE, BUT EC SUGGESTED ADDITION OF FOLLOWING LANGUAGE FROM EARLIER DRAFTS: "WHEN CHANGES IN SUCH

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RELEVANT POLICIES, LAWS, REGULATIONS OR ADMINISTRATIVE
PRACTICES ARE REQUIRED, THE RIGHTS AND INTERESTS OF
FOREIGN INVESTORS ALREADY ESTABLISHED IN THE COUNTRY
SHOULD BE RECOGNIZED."

9. PARA. 6C. G-8 SUGGESTED COMBINATION OF FIRST
SENTENCE OF PARA. 6E. WITH REST OF 6C., TO READ
AS FOLLOWS: "FAIR AND EQUITABLE TREATMENT OF
FOREIGN INVESTORS, CONSISTENT WITH INTERNATIONAL
LAW, AND NO LESS FAVORABLE THAN THAT ACCORDED
DOMESTIC INVESTORS OR THIRD COUNTRY
INVESTORS..." (INTERNATIONAL LAW REFERENCE IS
BRACKETED.) WE POINTED IN DISCUSSIONS TODAY THAT
ONLY FIRST PART IS ACCEPTED AS ORINCPLE OF
INTERNATIONAL LAW, AND THAT ELIMINATION OF
EXPLICIT REFERENCE TO INTERNATIONAL LAW WOULD
FURTHER DIFFUSE ISSUE. IF THAT OCCURS, WE
WOULD WISH TO REINSERT "FAIR AND EQUITABLE
TREATMENT" CONCEPT IN SUB PARA. (E).

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10. PARA. 6D. LAST PORTION CHANGED TO READ

"BY THE EXISTENCE OF EXCEPTIONAL BALANCE OF
PAYMENTS DIFFICULTIES."

11. PARA 6E. AFTER EXTENSIVE DISCUSSION, THIS
SECTION WAS RESTRUCTURED TO ELIMINATE THE VERB
(AND, INCIDENTALLY, MOST ASPECTS OF GOOD
SENTENCE STRUCTURE) AS FOLLOWS: "PAYMENT OF
PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION
IN THE EVENT OF DIRECT OR INDIRECT DEPRIVATION
OF A FOREIGN INVESTOR'S PROPERTY; SUCH ACTIONS
BEING FOR A PUBLIC PURPOSE, NONDISCRIMINATORY AND
IN ACCORDANCE WITH DUE PROCESS OF LAW."

12. PARA. 6F. THIS SECTION HAS BEEN PERHAPS THE
MOST DIFFICULT OF ALL ON WHICH TO REACH
AGREEMENT WITHIN G-8. EC PROPOSED ITS OWN
TEXT, WHICH TREATED LOCAL PROCEDURES AND
INTERNATIONAL ARBITRATION IN SEPARATE
SUBPARAGRAPHS, INCLUDING A REQUIREMENT TO
ARBITRATE WHEN LOCAL MEASURES FAILED TO
RESOLVE DISPUTES WITH FOREIGN INVESTORS. AFTER
EXTENSIVE DISCUSSION, FOLLOWING LANGUAGE WAS

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TENTATIVELY AGREED UPON: "PROCEDURES AVAILABLE FOR

SETTLEMENT OF DISPUTES WITH FOREIGN INVESTORS,
INCLUDING ARBITRATION, TO BE IMPARTIAL,
IN CONFORMITY WITH THE AFORE-MENTIONED PRINCIPLES
AND IN ACCORDANCE WITH GENERALLY ACCEPTED
STANDARDS OF PROCEDURAL DUE PROCESS." G-8
AGREED THAT SOME REFERENCE TO ICSID REQUIRED IN
PARA 6F., AND WE WILL SEEK AS WELL TO COVER
DESIRABILITY OF PRIOR AGREEMENT ON PROCEDURES
POINT CONTAINED IN OUR DRAFT.

13. PARA 6G. THIS SECTION IS NOW A SEPARATE
PARA. 7., BEGINNING "THE PARTICIPATING
COUNTRIES RECOGNIZE THAT FOREIGN INVESTORS,
FOR THEIR PART, SHOULD ALSO CONTRIBUTE TO A
FAVORABLE INVESTMENT CLIMATE BY..." PICKING UP
EACH OF THE ELEMENTS OF OUR DRAFT PARA. 6F.
WITHOUT SUBSTANTIVE CHANGE. HOWEVER, SWISS
SUGGESTED ADDITIONAL ELEMENT "MAKING THEIR OPERATIONS
AS TRANSPARENT AS POSSIBLE" TAKEN VERBATIM FROM
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OECD TEXT.

14. SWISS PROPOSED THAT REFERENCE TO UN TNC CODE
AND ECOSOC BRIBERY EXERCISE BE MOVED TO END OF
PARA. 6 OR MADE A SEPARATE PARAGRAPH
BUT DROPPED IDEA WHEN WE POINTED OUT THIS
WOULD GIVE EXTRA EMPHASIS TO THESE IDEAS.

15. COMMENT: DESPITE SLOW GOING IN SOME AREAS,
WE HAVE MADE REASONABLY GOOD PROGRESS WITHIN
G-8. EVEN WHEN WE HAVE AGREED DRAFT--
PROBABLY BY END OF APRIL 28--TACTICAL QUESTIONS
OF PRESENTATION OF OUR POSITION TO G-19 WILL REMAIN.
THERE IS WIDESPREAD RELUCTANCE IN G-8 SHARED BY
USDEL, TO PRESENT FURTHER COMPROMISES TO G-19
UNTIL WE ARE SURE THERE HAS BEEN NO SIGNIFICANT
BACKSLIDING.

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